

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

Linda Samson

v.

Department of Labor and Training,
Board of Review

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A.A. No. 13 - 053

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED,

that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the instant matter is AFFIRMED.

Entered as an Order of this Court at Providence on this 13th day of May, 2013.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

Linda Samson :
 :
v. : A.A. No. 13 - 053
 :
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Linda Samson urges that the Board of Review of the Department of Labor and Training erred when it found that she left her employment at Gano Holdings, LLC without good cause and was therefore barred from receiving unemployment benefits pursuant to Gen. Laws 1956 § 28-44-17. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-44-52. This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons that follow, I have

concluded that the Board of Review's decision is supported by substantial evidence of record and should be affirmed; I so recommend.

I. FACTS AND TRAVEL OF THE CASE

The facts and travel of this case may be briefly stated: Claimant Samson worked for Gano Holdings LLC for sixteen years until September 28, 2012, when she quit her position as a housekeeping supervisor. She filed for unemployment benefits on November 14, 2012 but, in a decision dated December 10, 2012, a designee of the Director determined her to be disqualified from receiving benefits pursuant to Gen. Laws 1956 § 28-44-17 because she voluntarily quit without good cause.

Claimant filed a timely appeal and a hearing was held by Referee Gunter A. Vukic on January 16, 2013. At the hearing, Ms. Samson was present and testified; no employer representative appeared. In his January 16, 2013 decision, Referee Vukic made the following findings of fact:

Following the passing of the claimant's brother in March 2012 she made a decision to relocate to a family property in Maine. Claimant gave ample notice to her employer, quit and relocated to Maine without establishing new employment. Claimant subsequently filed for unemployment insurance benefits.

Referee's Decision, January 16, 2013, at 1. Based on these findings, Referee Vukic made the following conclusions:

The issue in this case is whether or not the claimant left work voluntarily with good cause within the meaning of Section 28-44-17 of the Rhode Island Employment Security Act. In order to show good cause for leaving employment, the claimant must show that the work had become unsuitable or that the claimant was left with no reasonable alternative but to resign. The burden of proof rests solely on the claimant. Insufficient testimony and no evidence has been provided to support either of the above conditions.

The claimant's employment of 16 years was neither unsuitable nor was she left with no reasonable alternative but to resign. Claimant made a personal decision to resign from her employment and relocate out-of-state.

Therefore, I find and determined that the claimant left her job without good cause and benefits are denied.

Referee's Decision, January 16, 2013, at 1-2. Accordingly, the Referee affirmed the decision of the Director and found that Claimant was disqualified from receiving benefits because she quit her position for a personal reason that did not constitute good cause under the Employment Security Act. Claimant filed a timely appeal and, on March 1, 2013, the members of the Board of Review issued a unanimous decision affirming the Referee's decision — finding it to be a proper adjudication of the facts and the law applicable thereto; moreover, the Referee's decision was adopted as the Decision of the Board. On March 25, 2013, Ms. Samson filed a complaint for judicial review in the Sixth Division District Court.

II. APPLICABLE LAW

Our review of this case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically touches on voluntary leaving without good cause; Gen. Laws 1956 § 28-44-17, provides:

28-44-17. Voluntary leaving without good cause. – An individual who leaves work voluntarily without good cause shall be ineligible for waiting period credit or benefits for the week until he or she establishes to the satisfaction of the director that he or she has subsequent to that leaving had at least eight (8) weeks of work, and in each of those eight (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. * * * For the purposes of this section, ‘voluntarily leaving work without good cause’ shall include voluntarily leaving work with an employer to accompany, join or follow his or her spouse in a new locality in connection with the retirement of his or her spouse, or failure by a temporary employee to contact the temporary help agency upon completion of the most recent work assignment to seek additional work unless good cause is shown for that failure; however, that the temporary help agency gave written notice to the individual that the individual is required to contact the temporary help agency at the completion of the most recent work assignment to seek additional work.

In the case of Harraka v. Board of Review of Department of Employment Security, 98 R.I. 197, 201, 200 A.2d 595, 597-98 (1964), the Rhode Island Supreme Court noted that a liberal reading of good cause would be adopted:

To view the statutory language as requiring an employee to establish that he terminated his employment under compulsion is to make any voluntary termination thereof work a forfeiture of his eligibility under the act. This, in our opinion, amounts to reading into the statute a provision that the legislature did not contemplate at the time of its enactment.

In excluding from eligibility for benefit payments those who voluntarily terminate their employment without good cause, the legislature intended in the public interest to secure the fund from which the payments are made against depletion by payment of benefits to the shirker, the indolent, or the malingerer. However, the same public interest demands of this court an interpretation sufficiently liberal to permit the benefits of the act to be made available to employees who in good faith voluntarily leave their employment because the conditions thereof are such that continued exposure thereto would cause or aggravate nervous reactions or otherwise produce psychological trauma.

Later, in Murphy v. Fascio, 115 R.I. 33, 340 A.2d 137 (1975), the Supreme Court elaborated that:

The Employment Security Act was intended to protect individuals from the hardships of unemployment the advent of which involves a substantial degree of compulsion.

Murphy, 115 R.I. at 37, 340 A.2d at 139.

and

* * * unemployment benefits were intended to alleviate the economic insecurity arising from termination of employment the prevention of which was effectively beyond the employee's control.”

Murphy, 115 R.I. at 35, 340 A.2d at 139.

III. STANDARD OF REVIEW

The standard of review by which the court must proceed is established in Gen. Laws § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

42-35-15. Judicial review of contested cases.

* * *

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’”¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

fact.² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

The Supreme Court of Rhode Island recognized in Harraka, supra, 98 R.I. at 200, 200 A.2d at 597, that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

* * * eligibility for benefits is to be determined in the light of the expressed legislative policy that “Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family.” G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

² Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

³ Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

IV. ISSUE

The issue before the Court is whether the decision of the Board of Review was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law. More precisely, was claimant properly disqualified from receiving unemployment benefits because she left work without good cause pursuant to section 28-44-17?

V. ANALYSIS

Based on the testimony received at the hearing he held and the documents contained in the administrative record, Referee Vukic found that Claimant quit her position without good cause; on appeal, the Board of Review affirmed his decision and adopted it as its own. Because I believe this finding to be well-supported by the record, I must recommend that this Court affirm the Board of Review's decision.

A.

In 2012, Ms. Samson lost both her mother and her middle brother. Referee Hearing Transcript, at 7-8. She indicated she left her position at Gano Holdings in order to relocate to Maine to maintain the family home so that it could be sold. Referee Hearing Transcript, at 7. Her other two brothers were not able to assume these responsibilities. Referee Hearing Transcript, at 9

At no time during the hearing did Claimant allege that her position with this employer had become unsuitable. Referee Hearing Transcript, passim.

B.

We can state — based on the record in this case — that it is uncontested that Ms. Samson left Gano Holdings to relocate to Maine in order to maintain the family home. But relocation is a circumstance which generally makes one ineligible for unemployment benefits, because it is viewed as a *personal* reason for quitting.⁴ And this rule has been applied to the situation where the Claimant’s relocation was triggered by an interest in realty which was recently acquired or alienated. See Delancy v. Department of Employment Security Board of Review, A.A. No. 83-60, Slip op. at 4-6, (Dist. Ct. 11/2/1983)(Board’s denial of benefits was affirmed by the District Court [Pederzani, J.] where the claimant terminated so that she could relocate to a house in New London, CT, she had recently

⁴ One limited exception to the general rule of disqualification when a claimant quits and relocates for personal reasons may be found in Rocky Hill School, Inc. v. Department of Labor & Training, Board of Review, 668 A.2d 1241 (R.I. 1995), a case in which benefits were allowed a teacher named Geiersbach who quit his position at the Rocky Hill School in order to accompany his wife — who also had been a Rocky Hill teacher — to Colorado, where she had obtained a new and better position. Rocky Hill, 668 A.2d at 1241. The Supreme Court held “* * * that public policy requires that families not be discouraged from remaining together.” Rocky Hill, 668 A.2d at 1244. This exception does not apply in Ms. Samson’s case.

inherited) and Salisbury v. Department of Labor and Training, Board of Review, A.A. No. 08-124, Slip op. at 7-8, (Dist.Ct. 10/23/2008)(Board's denial of benefits was affirmed where claimant, forced by financial circumstances to sell his Rhode Island home, took up residence in his Florida home). Accordingly, I must conclude that the Referee was fully justified in finding that Ms. Samson's termination based on her perfectly logical desire to protect an important family asset cannot be considered a leaving for grounds that would constitute "good cause" within the meaning of section 28-44-17.

C.

Pursuant to Gen. Laws 1956 § 42-35-15(g), the decision of the Board must be upheld unless it was, *inter alia*, contrary to law, clearly erroneous in light of the substantial evidence of record, or arbitrary or capricious. When applying this standard, the Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact, including the question of which witnesses to believe. Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.⁵

⁵ Cahoone, supra at 7, n. 2, 104 R.I. at 506, 246 A.2d at 215 (1968). See also D'Ambra v. Bd. of Review, Dept. of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986). See also Gen. Laws § 42-35-15(g), supra at 6, and Guarino, supra at 6, n.1.

Accordingly, the Board's decision (adopting the finding of the Referee) that Claimant voluntarily terminated her employment without good cause within the meaning of section 17 is supported by the reliable, probative, and substantial evidence of record and should be affirmed.

VI. CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review regarding claimant's eligibility to receive unemployment benefits was supported by the reliable, probative, and substantial evidence of record and was not clearly erroneous. Gen. Laws 1956 § 42-35-15(g)(3).

Accordingly, I recommend that the decision of the Board of Review in the instant matter be AFFIRMED.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

MAY 13, 2013

